

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: GEORGIA

REQUIREMENTS FOR ADVANCE DIRECTIVES UNDER STATE PLANS
FOR MEDICAL ASSISTANCE

The following is a written description of the law of the State (whether statutory or as recognized by the courts of the State) concerning advance directives. If applicable States should include definitions of living will, durable power of attorney for health care, durable power of attorney, witness requirements, special State limitations on living will declarations, proxy designation, process information and State forms, and identify whether State law allows for a health care provider or agent of the provider to object to the implementation of advance directives on the basis of conscience.

The Official Code of Georgia Annotated concerning advance directives is included herein as pages 1a through 25a of Attachment 4.34-A. Definitions can be referenced at the code cites listed below:

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|-----------------------------|----------------------|
| • living will | 31-32-2 |
| • durable power of attorney | 31-36-2 |
| • witness requirements | 31-32-3 and 31-36-5 |
| • proxy designation | 31-36-4 |
| • process information | 31-32-3 and 31-36-5 |
| • State forms | 31-32-3 and 31-36-10 |
| • conscientious objection | 31-32-9 and 31-36-7 |

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CHAPTER 32

LIVING WILLS

Sec.		Sec.	
31-32-1.	Legislative findings.	31-32-9.	Living will as not constituting suicide; effect of living will on insurance; restriction on health care facilities' preparing living wills.
31-32-2.	Definitions.		
31-32-3.	Execution; witnesses; form.		
31-32-4.	Patients in hospitals or skilled nursing facilities.		
31-32-8.	Conditions precedent to withholding or withdrawal of life-sustaining procedures; physician's failure or refusal to comply with living will.	31-32-11.	Effect of chapter on other legal rights and duties.

Law reviews. — For article, "If Nancy Cruzan Had Lived in Georgia: A Summary of Georgia Law Regarding the Right to Die," see 27 Ga. St. B.J. 194 (1991). For article, "Experimenting With the 'Right to Die' in the Laboratory of the States," see 25 Ga. L. Rev. 1253 (1991).

For comment, "Living Will Statutes in Light of Cruzan v. Director, Missouri Department of Health: Ensuring that a Patient's Wishes Will Prevail", see 40 Emory L.J. 1305 (1991).

31-32-1. Legislative findings.

(a) The General Assembly finds that modern medical technology has made possible the artificial prolongation of human life.

(b) The General Assembly further finds that, in the interest of protecting individual autonomy, such prolongation of life for persons with a terminal condition, a coma, or a persistent vegetative state may cause loss of patient dignity and unnecessary pain and suffering, while providing nothing medically necessary or beneficial to the patient.

(c) The General Assembly further finds that there exists considerable uncertainty in the medical and legal professions as to the legality of terminating the use of life-sustaining procedures in certain situations.

(d) In recognition of the dignity and privacy which patients have a right to expect, the General Assembly declares that the laws of the State of Georgia shall recognize the right of a competent adult person to make a written directive, known as a living will, instructing his physician to withhold or withdraw life-sustaining procedures in the event of a terminal condition, a coma, or a persistent vegetative state. (Code 1981, § 31-32-1, enacted by Ga. L. 1984, p. 1477, § 1; Ga. L. 1992, p. 1926, § 1.)

The 1992 amendment, effective April 16, 1992, in subsections (b) and (d), inserted ", a coma, or a persistent vegetative state".

Law reviews. — For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 270 (1992).

31-32-2. Definitions.

As used in this chapter, the term:

(1) "Attending physician" means the physician who has been selected by or assigned to the patient and who has assumed primary responsibility for the treatment and care of the patient; provided, however, that if the physician selected by or assigned to the patient to provide such treatment and care directs another physician to assume primary responsibility for such care and treatment, the physician who has been so directed shall, upon his or her assumption of such responsibility, be the "attending physician."

(2) "Coma" means a profound state of unconsciousness caused by disease, injury, poison, or other means and for which it has been determined that there exists no reasonable expectation of regaining consciousness. The procedure for establishing a coma is as follows: two physicians, one of whom must be the attending physician, who, after personally examining the declarant, shall certify in writing, based upon conditions found during the course of their examination, that:

(A) The declarant has been in a profound state of unconsciousness for a period of time sufficient for the declarant's physicians to conclude that the unconscious state will continue; and

(B) There exists no reasonable expectation that the declarant will regain consciousness.

(3) "Competent adult" means a person of sound mind who is 18 years of age or older.

(4) "Declarant" means a person who has executed a living will authorized by this chapter.

(5) "Hospital" means a facility which has a valid permit or provisional permit issued under Chapter 7 of this title and which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons.

(6) "Life-sustaining procedures" means any medical procedures or interventions, which, when applied to a patient in a terminal condition or in a coma or persistent vegetative state with no reasonable expectation of regaining consciousness or significant cognitive function, would serve only to prolong the dying process and where, in the

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judgment of the attending physician and a second physician, death will occur without such procedures or interventions. The term "life-sustaining procedures" may include, at the option of the declarant, the provision of nourishment and hydration, but shall not include the administration of medication to alleviate pain or the performance of any medical procedure deemed necessary to alleviate pain.

(7) "Living will" means a written document voluntarily executed by the declarant in accordance with the requirements of Code Section 31-32-3 or 31-32-4.

(8) "Patient" means a person receiving care or treatment from a physician.

(9) "Persistent vegetative state" means a state of severe mental impairment in which only involuntary bodily functions are present and for which there exists no reasonable expectation of regaining significant cognitive function. The procedure for establishing a persistent vegetative state is as follows: two physicians, one of whom must be the attending physician, who, after personally examining the declarant, shall certify in writing, based upon conditions found during the course of their examination, that:

(A) The declarant's cognitive function has been substantially impaired; and

(B) There exists no reasonable expectation that the declarant will regain significant cognitive function.

(10) "Physician" means a person lawfully licensed in this state to practice medicine and surgery pursuant to Article 2 of Chapter 34 of Title 43.

(11) "Reasonable expectation" means the result of prudent judgment made on the basis of the medical judgment of a physician.

(12) "Skilled nursing facility" means a facility having a valid permit or provisional permit issued under Chapter 7 of this title and which provides skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis.

(13) "Terminal condition" means incurable condition caused by disease, illness, or injury which, regardless of the application of life-sustaining procedures, would produce death. The procedure for establishing a terminal condition is as follows: two physicians, one of whom must be the attending physician, who, after personally examining the declarant, shall certify in writing, based upon conditions found during the course of their examination, that:

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(A) There is no reasonable expectation for improvement in the condition of the declarant; and

(B) Death of the declarant from these conditions will occur as a result of such disease, illness, or injury. (Code 1981, § 31-32-2, enacted by Ga. L. 1984, p. 1477, § 1; Ga. L. 1992, p. 1926, § 2.)

The 1992 amendment, effective April 16, 1992, added present paragraph (2); redesignated former paragraphs (2) through (4) as present paragraphs (3) through (5); rewrote former paragraph (5) and redesignated it as present paragraph (6); redesignated former paragraphs (6) and (7) as present paragraphs (7) and (8); added present paragraph (9); redesignated former paragraph (8) as present paragraph (10); added present paragraph (11); redesignated former paragraphs (9) and (10) as present paragraphs (12) and (13); and, in

paragraph (13), in the second sentence of the introductory paragraph, inserted ", one of whom must be the attending physician," and added ", that" preceding the colon, and in subparagraph (B), substituted "will occur as a result of such disease, illness, or injury" for "is imminent".

Law reviews. — For annual survey of law of wills, trusts, and administration of estates, see 44 Mercer L. Rev. 445 (1992).

For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 270 (1992).

31-32-3. Execution; witnesses; form.

(a) Any competent adult may execute a document directing that, should the declarant have a terminal condition, life-sustaining procedures be withheld or withdrawn. Such living will shall be signed by the declarant in the presence of at least two competent adults who, at the time of the execution of the living will, to the best of their knowledge:

(1) Are not related to the declarant by blood or marriage;

(2) Would not be entitled to any portion of the estate of the declarant upon the declarant's decease under any testamentary will of the declarant, or codicil thereto, and would not be entitled to any such portion by operation of law under the rules of descent and distribution of this state at the time of the execution of the living will;

(3) Are neither the attending physician nor an employee of the attending physician nor an employee of the hospital or skilled nursing facility in which the declarant is a patient;

(4) Are not directly financially responsible for the declarant's medical care; and

(5) Do not have a claim against any portion of the estate of the declarant.

(b) The declaration shall be in writing. Any declaration which constitutes a living will shall be honored, regardless of any other provisions of this Code, if it is executed on or after

the date it was executed. The declaration shall be binding on the declarant and his or her estate.

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unless revoked. A declaration similar to the following form or in substantially the form specified under prior law shall be presumed on its face to be valid and effective:

"LIVING WILL

Living will made this _____ day of _____ (month, year).

I, _____, being of sound mind, willfully and voluntarily make known my desire that my life shall not be prolonged under the circumstances set forth below and do declare:

1. If at any time I should (check each option desired):

☐ have a terminal condition,

☐ become in a coma with no reasonable expectation of regaining consciousness, or

☐ become in a persistent vegetative state with no reasonable expectation of regaining significant cognitive function,

as defined in and established in accordance with the procedures set forth in paragraphs (2), (9), and (13) of Code Section 31-32-2 of the Official Code of Georgia Annotated, I direct that the application of life-sustaining procedures to my body (check the option desired):

☐ including nourishment and hydration,

☐ including nourishment but not hydration, or

☐ excluding nourishment and hydration,

be withheld or withdrawn and that I be permitted to die;

2. In the absence of my ability to give directions regarding the use of such life-sustaining procedures, it is my intention that this living will shall be honored by my family and physician(s) as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences from such refusal;

3. I understand that I may revoke this living will at any time;

4. I understand the full import of this living will, and I am at least 18 years of age and am emotionally and mentally competent to make this living will; and

5. If I am a female and I have been diagnosed as pregnant, this living will shall have no force and effect unless the fetus is not viable and I indicate by initialing after this sentence that I want this living will to be carried out. (Initial)

Signed _____

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_____ (City), _____ (County), and _____ (State of
Residence).

I hereby witness this living will and attest that:

(1) The declarant is personally known to me and I believe the
declarant to be at least 18 years of age and of sound mind;

(2) I am at least 18 years of age;

(3) To the best of my knowledge, at the time of the execution of
this living will, I:

(A) Am not related to the declarant by blood or marriage;

(B) Would not be entitled to any portion of the declarant's
estate by any will or by operation of law under the rules of descent
and distribution of this state;

(C) Am not the attending physician of declarant or an em-
ployee of the attending physician or an employee of the hospital
or skilled nursing facility in which declarant is a patient;

(D) Am not directly financially responsible for the declarant's
medical care; and

(E) Have no present claim against any portion of the estate of
the declarant;

(4) Declarant has signed this document in my presence as above
instructed, on the date above first shown.

Witness _____

Address _____

Witness _____

Address _____

Additional witness required when living will is signed in a hospital
or skilled nursing facility.

I hereby witness this living will and attest that I believe the declarant
to be of sound mind and to have made this living will willingly and
voluntarily.

Witness: _____

Medical director of skilled nursing facil-
ity or staff physician not participating in
care of the patient or chief of the hospi-
tal medical staff or staff physician or
hospital designee not participating in
care of the patient."

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(Code 1981, § 31-32-3, enacted by Ga. L. 1984, p. 1477, § 1; Ga. L. 1986, p. 445, § 2; Ga. L. 1989, p. 1182, § 1; Ga. L. 1992, p. 1926, § 3; Ga. L. 1993, p. 91, § 31.)

The 1992 amendment, effective April 16, 1992, in subsection (b), rewrote the introductory language, rewrote paragraphs 1 and 5 of the living will form, and inserted "or hospital designee" near the end of the form.

The 1993 amendment, effective March 22, 1993, in the introductory language of subsection (b), substituted "March 28" for "March 18", in the living will form contained in subsection (b), substituted "paragraphs (2), (9), and (13)" for "paragraphs (2), (9), and (10)", and, in item 1 of the

living will form contained in subsection (b), substituted "() including nourishment but not hydration, or" for "() including hydration but not nourishment, or".

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "above instructed" was substituted for "above-instructed" in paragraph (4) of the witness statement form in subsection (b).

Law reviews. — For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 270 (1992).

31-32-4. Patients in hospitals or skilled nursing facilities.

A living will shall have no force or effect if the declarant is a patient in a hospital or skilled nursing facility at the time the living will is executed unless the living will is signed in the presence of the two witnesses as provided in Code Section 31-32-3 and, additionally, is signed in the presence of either the chief of the hospital medical staff, any physician on the medical staff who is not participating in the care of the patient, or a person on the hospital staff who is not participating in the care of the patient designated by the chief of staff and the hospital administrator, if witnessed in a hospital, or the medical director or any physician on the medical staff who is not participating in the care of the patient, if witnessed in a skilled nursing facility. (Code 1981, § 31-32-4, enacted by Ga. L. 1984, p. 1477, § 1; Ga. L. 1989, p. 1182, § 2; Ga. L. 1992, p. 1926, § 4.)

The 1992 amendment, effective April 16, 1992, near the middle of the Code section, substituted a comma for "or" following "medical staff" and inserted after the next comma "or a person on the hospital staff who is not participating in the care of

the patient designated by the chief of staff and the hospital administrator,".

Law reviews. — For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 270 (1992).

31-32-8. Conditions precedent to withholding or withdrawal of life-sustaining procedures; physician's failure or refusal to comply with living will.

(a) Prior to effecting a withholding or withdrawal of life-sustaining procedures from a patient pursuant to a living will, the attending physician:

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(1) Shall determine that, to the best of his knowledge, the declarant patient is not pregnant, or if she is, that the fetus is not viable and that the declarant's living will specifically indicates that the living will is to be carried out;

(2) Shall, without delay after the diagnosis of a terminal condition of the declarant, take the necessary steps to provide for the written certification required by Code Section 31-32-2 of the declarant's terminal condition, coma, or persistent vegetative state;

(3) Shall make a reasonable effort to determine that the living will complies with subsection (b) of Code Section 31-32-3; and

(4) Shall make the living will and the written certification of the terminal condition, coma, or persistent vegetative state a part of the declarant patient's medical records.

(b) The living will shall be presumed, unless revoked, to be the directions of the declarant regarding the withholding or withdrawal of life-sustaining procedures. No person shall be civilly liable for failing or refusing in good faith to effectuate the living will of the declarant patient. The attending physician who fails or refuses to comply with the declaration of a patient pursuant to this chapter shall endeavor to advise promptly the next of kin or legal guardian of the declarant that such physician is unwilling to effectuate the living will of the declarant patient. The attending physician shall thereafter at the election of the next of kin or the legal guardian of the declarant:

(1) Make a good faith attempt to effect the transfer of the qualified patient to another physician who will effectuate the declaration of the patient; or

(2) Permit the next of kin or legal guardian to obtain another physician who will effectuate the declaration of the patient. (Code 1981, § 31-32-8, enacted by Ga. L. 1984, p. 1477, § 1; Ga. L. 1992, p. 1926, § 5.)

The 1992 amendment, effective April 16, 1992, in subsection (a), made the following changes: in paragraph (1), added all of the language following "pregnant"; in paragraph (2), substituted all of the present language following "provide for" for "written certification by said physician

of the declarant's terminal condition"; and, in paragraph (4), inserted ", coma, or persistent vegetative state".

Law reviews. — For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 270 (1992).

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31-32-9. Living will as not constituting suicide; effect of living will on insurance; restriction on health care facilities' preparing living wills.

(a) The making of a living will pursuant to this chapter shall not, for any purpose, constitute a suicide.

(b) The making of a living will pursuant to this chapter shall not restrict, inhibit, or impair in any manner the sale, procurement, issuance, or enforceability of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired or invalidated in any manner by the making of a living will pursuant to this chapter or by the withholding or withdrawal of life-sustaining procedures from an insured patient, nor shall the making of such a living will or the withholding or withdrawal of such life-sustaining procedures operate to deny any additional insurance benefits for accidental death of the patient in any case in which the terminal condition of the patient is the result of accident, notwithstanding any term of the policy to the contrary.

(c) No physician, hospital, skilled nursing facility, or other health provider and no health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital service plan shall require any person to execute a living will as a condition for being insured for, or receiving, health care services.

(d) No hospital, skilled nursing facility, or other medical or health care facility shall prepare or offer to prepare living wills unless specifically requested to do so by a person desiring to execute a living will. For purposes of this article, a person in the custody of the Department of Corrections shall not be deemed to be a patient within the meaning of this article, nor shall a correctional facility be deemed to be a hospital, skilled nursing facility, nor any other medical or health care facility. (Code 1981, § 31-32-9, enacted by Ga. L. 1984, p. 1477, § 1; Ga. L. 1985, p. 455, § 1; Ga. L. 1992, p. 1926, § 6.)

The 1992 amendment, effective April 16, 1992, in the first sentence of subsection (d), substituted "shall prepare or offer to prepare" for "shall prepare, offer to prepare, or otherwise provide forms for"; and added the second sentence of subsection (d).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "this article" was substituted for "this Article" twice in subsection (d).

Law reviews. — For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 270 (1992).

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